

Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

NICOLE A. ZELIN
Greenfield, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

GEORGE P. SHERMAN
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

JOSH LEE VORIS,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

)
)
)
)
)
)
)
)
)
)

No. 30A01-0706-CR-250

APPEAL FROM THE HANCOCK CIRCUIT COURT
The Honorable Richard D. Culver, Judge
Cause No. 30C01-0606-FD-106

September 12, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Defendant Josh Voris appeals following his conviction for Failure to Register as a Sex Offender, a Class D felony,¹ and his corresponding sentence of one and one-half years in the Department of Correction. Upon appeal, Voris argues that his sentence is inappropriate. We affirm.

FACTS

Voris is a convicted sex offender by virtue of his January 20, 2006 conviction for Class C felony Sexual Misconduct with a Minor, and he was on probation for this offense when he failed to register as a sex offender on May 5, 2006. On June 2, 2006, the State charged Voris with failure to register as a sex offender. During a February 20, 2007 probation violation hearing, Voris admitted that he had failed to register as a sex offender, and the trial court accepted his guilty plea. At a March 14, 2007 sentencing hearing, Voris admitted that he had threatened to kill various probation officers and to bomb the probation office. The trial court sentenced Voris to one and one-half years in the Department of Correction. Voris now appeals, claiming the imposition of one and one-half years is an inappropriate sentence in light of his character and nature of his offense.

DISCUSSION AND DECISION

Article VII, Sections 4 and 6 of the Indiana Constitution “‘authorize[] independent appellate review and revision of a sentence imposed by the trial court.’” *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007) (quoting *Childress v. State*, 848 N.E.2d 1073,

¹ Ind. Code § 5-2-12-9 (2006). We note that Indiana Code section 5-2-12-9 has since been repealed and that the offense of failure to register as a sex offender is currently defined by Indiana Code section 11-8-8-17, effective July 1, 2006.

1080 (Ind. 2006) (emphasis and internal quotations omitted)). Such appellate authority is implemented through Indiana Appellate Rule 7(B), which provides that the “Court may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” We exercise deference to a trial court’s sentencing decision, both because Rule 7(B) requires that we give “due consideration” to that decision and because we recognize the unique perspective a trial court has when making sentencing decisions. *Stewart v. State*, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). It is the defendant’s burden to demonstrate that his sentence is inappropriate. *Childress*, 848 N.E.2d at 1080.

Voris argues that the nature of his offense is merely a status crime. He further argues that the instant crime and his criminal history, which he points out is short, are more a reflection of his mental health and medical history than an indictment of his claimed good character.

In sentencing Voris, the court stated the following:

[C]ertainly in the profession we’re called upon to try to help people, and you know it would be nice if we could help people without our staffs being put in harm’s way and that’s certainly not something that can be taken lightly and you know, realistically if there are people that are going to receive lengthy sentences they should be the ones that threaten their probation officers with violence. I can’t think of my old client’s name, because this is twenty some years ago, I defended a young man who did something foolish and hurt somebody, and he did it in response to somebody like you who was engaged in this fantasy who wanted somebody to be hurt and my client thought they were dead serious and so, you know, you may have been engaged in some delusional fantasy and, if given the opportunity, you might not have carried it out, but once you verbalize it and put things in writing you never know the person that you’re dealing with

might be a lot more dangerous than you are. So that, I think that does present a real threat. I do see you as damaged goods and I don't mean that to be disrespectful to you, but, and I want to say this, we've talked about step-dad, I, I think you may have been abused and I think there's some evidence out there that nobody's really dug very deep into, of what your very young childhood may have been like, and so there's a certain part of all of us that feel sorry for you. . . . [T]he huge problem that's out there on the table is the threat to probation. . . . With regard to the failure to register, if I went down to the minimum, I think I would be failing to recognize the fact that you had been warned, and you simply weren't following the rules, and again, I, I don't want to give you the maximum penalty, and so what I'll do is I'll give you what we used to refer [to] as the old presumptive sentence and close that out for one and a half.

Sentencing Transcript at 34-36.

We first observe that Voris received the advisory sentence for his Class D felony of one and one-half years. *See* Ind. Code § 35-50-2-7 (2006). Because the legislature would have been aware of the nature of this crime at the time it set the advisory sentence, we do not see how the alleged “status” nature of his offense weighs in favor of a lesser sentence than that which the legislature recommended.

As to Voris's character, we acknowledge, as did the trial court, that Voris has a history of medical diagnoses including obsessive compulsive disorder, attention deficit hyperactivity disorder, and Tourette's Syndrome, that he had a head injury when he was three years old, and that he was likely sexually abused as a child. We further acknowledge that Voris's failure to take his prescribed medications may have had an impact on his behavior. Nevertheless, Voris admitted to threatening the probation department with plans to kill specific officers and to bomb the probation office for purposes of destroying evidence following his arrest. We think these threats reflect

sufficiently upon Voris's character to justify the trial court's imposition of the advisory sentence and its disinclination to suspend any part of that sentence to probation.

The judgment of the trial court is affirmed.

NAJAM, J., and MATHIAS, J., concur.